

FOOD STAMP PROGRAM - ADMINISTRATIVE DISQUALIFICATION HEARINGS

22 VAC 40-600-10 et seq.

Regulation

Part I.

DEFINITIONS

22 VAC 40-600-10. Definitions.

The following words and terms, when used in these guidelines, shall have the following meaning unless the context clearly indicates otherwise:

?Administrative Disqualification Hearing (ADH)? means an impartial review by a ~~hearings~~ hearing officer of a household member?s actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation (IPV).

?Access device? means any card, plate, code, account number, or other means of access that can be used alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

?Authorization to Participate? (ATP) means a document authorizing a household to receive a food stamp allotment in a specific amount for a specific entitlement period from an authorized food coupon issuance agent.

?~~Hearings~~ Hearing Officer? means an impartial representative of the State to

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whom requests for administrative disqualification hearings or fair hearings are assigned by whom they are heard. The ~~hearings~~ hearing officer is given the authority to conduct and control hearings and to render decisions.

?Intentional Program Violations (IPV)? means any action by an individual who intentionally made a false or misleading statement to the local agency either orally or in writing, to obtain benefits to which the household is not entitled; concealed information or withheld fact to obtain benefits to which the household is not entitled; or, committed any act that constitutes a violation of the Food Stamp Act, Food Stamp regulations, or any state statutes relating to the use, presentations, transfer, acquisition, receipt, or possession of food stamp coupons, ~~or~~ authorization to participate (ATP) cards, or access devices.

Part II.

REFERRAL OF ALLEGED INTENTIONAL PROGRAM VIOLATION

22 VAC 40-600-20. Investigations

The local agency shall be responsible for investigating any case of alleged intentional program violation and ensuring that appropriate cases are acted upon either through referral for an administrative disqualification hearing or for prosecution by a court of appropriate jurisdiction.

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Part III.

INITIATION OF AN ADMINISTRATIVE DISQUALIFICATION HEARING

22 VAC 40-600-30. Evidence.

In order for a local agency to request an ADH, there must be clear and convincing evidence which demonstrated the household member committed or intended to commit an IPV.

22 VAC 40-600-40. Review.

The local agency shall ensure that the evidence against the household member alleged to commit an IPV is reviewed by either an eligibility supervisor or the agency superintendent for purposes of certifying that such evidence warrants referral for an ADH.

22 VAC 40-600-50. Notice

Prior to submitting the referral for an ADH to the State Hearing ~~Authority~~ Manager, the local agency shall provide written notification to the household member suspected of IPV that the member can waive his right to an ADH by signing a waiver request and returning it to the local agency within 10 days from the date notification is sent to the household in order to avoid submission of the referral for an ADH.

22 VAC 40-600-60. Waiver.

If a signed waiver is received, no ADH is conducted and the disqualification period is imposed in accordance with federal regulations.

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Part IV.

ADVANCE NOTICE OF AN ADMINISTRATIVE DISQUALIFICATION HEARING 22 VAC 40-600-70. Notice.

The hearing officer will schedule a date for the ADH and provide written notice to the household member suspected of an IPV, by certified mail - return receipt requested, or first class mail at least 30 days in advance of the date the ADH has been scheduled. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held. The hearing officer is required to compare the household's address on the local agency referral with other documents associated with the case. A revised notice must be provided to the household member if an error is discovered in the address used for the original notice of the hearing.

22 VAC 40-600-80. Waiver of notice.

If proof of receipt of the advance notification of the ADH or refusal to accept the notice have been received, the requirement to notify the individual alleged to have committed the IPV has been met.

~~22 VAC 40-600-90. Waiver of ADH.~~

~~Without sufficient evidence that the advance notification was received or refused, the ADH is not to be held.~~

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Part V.

TIME AND PLACE OF THE ADMINISTRATIVE DISQUALIFICATION HEARING

22 VAC 40-600-100. Location.

The time and place of the ADH shall be arranged to that the hearing is acceptable to the household member suspected of an IPV.

22 VAC 40-600-110. Postponement.

The member or member's representative may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.

Part VI.

FAILURE OF THE HOUSEHOLD MEMBER TO APPEAR AT THE
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22 VAC 40-600-120. Appearance failure.

The ADH can be held even if the member or member's representative subsequently cannot be located or fails to appear without good cause.

22 VAC 40-600-130. Evidence.

Even though the household member is not represented, the ~~hearings~~ hearing officer must carefully consider the evidence and determine if N IPV was committed, based on clear and convincing evidence.

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22 VAC 40-600-140. New administrative disqualification hearing.

If the household member is found to have committed an IPV, but a ~~hearings~~ hearing officer later determines there was good cause for not appearing, including that the notice was sent to an incorrect address, the previous decision is no longer valid and a new ADH shall be conducted.

Part VII.

PARTICIPATION WHILE AWAITING A HEARING

22 VAC 40-600-150. Participation

A pending ADH shall not affect the household's right to be certified and participate in the Food Stamp Program.

Part VIII.

CONDUCT OF THE ADMINISTRATIVE DISQUALIFICATION HEARING

22 VAC 40-600-160. Attendance.

The ADH is attended by persons directly concerned with the issue at hand.

22 VAC 40-600-170. Duties of hearing officer.

The hearing officer shall:

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1. Identify those present for the record.
2. Advise the household member or representative that he may refuse to answer questions during the hearing.
3. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of either the local agency or the household to request ~~State Board~~ an administrative review of the hearing officer's decision. The hearing officer shall also explain that only the household may seek a change to the hearing officer's decision through a court of appropriate jurisdiction.
4. Consider all relevant issues. Even if the household is not present, the hearing officer is to carefully consider the evidence and determine if any IPV was committed based on clear and convincing evidence.
5. Request, receive and make part of the record all evidence determined necessary to render a decision.
6. Regulate the conduct and course of the hearing consistent with the process to ensure an orderly hearing.

22 VAC 40-600-180. Opportunities of member.

The household member alleged to have committed an IPV and the representative shall be given adequate opportunity to:

1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH.

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2. Present its case or have it presented by legal counsel or another person.
3. Bring witnesses.
4. Advance arguments without undue interference.
5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.
6. Submit evidence to establish all pertinent fact and circumstances in the case.

Part IX.

NOTIFICATION OF DECISION OF THE ADMINISTRATIVE DISQUALIFICATION HEARING

22 VAC 40-600-190. Evidence.

The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the hearing record which can be substantiated by supporting evidence and applicable regulations.

22 VAC 40-600-200. Written report.

The ~~hearings~~ hearing officer shall prepare a written report of the substance of the findings, conclusions, decisions, and appropriate recommendations.

22 VAC 40-600-210. Notification of decision.

The hearing officer shall notify the household member of the decision in writing and of

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the household's right to ~~request a State Board~~ seek an administrative review or court appeal of the decision.

22 VAC 40-600-220. Disqualification.

If the hearing decision is that the household member has been found guilty of an IPV, the written decision shall advise that household that disqualification shall occur.

22 VAC 40-600-230. Reversal.

The determination of IPV by the hearing officer cannot be reversed by a subsequent fair hearing decision.

Part X

IMPLEMENTATION OF THE ADMINISTRATIVE DISQUALIFICATION HEARING

22 VAC 40-600-240. Process.

Upon receipt of the notice of a decision from the hearing officer the household member guilty of an IPV, the local agency shall inform the household of the reason for the disqualification and the date the disqualification will take effect.